



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND DIVISION
ELC. CASE NO. 170 OF 2008

LAWRENCE MUKIRI MUNGAI.....PLAINTIFF

VERSUS

ATTORNEY GENERAL..... 1ST DEFENDANT

DAVID MWAURA KARANJA.....2ND DEFENDANT

BENJAMIN KANYINGI NDUNGU..... 3RD DEFENDANT

SIMON KIRUTHI NDUNG’U..... 4TH DEFENDANT

MICHAEL MWAURA NDUNG’U..... 5TH DEFENDANT

RUTH WANJIKU IHURURU..... 6TH DEFENDANT

RULING

Coming up before me for determination is the Notice of Motion dated 27th March 2014 in which the Plaintiff/Applicant seeks for the following orders:

1. That the Hon. Lady Justice Mary Gitumbi be pleased to recuse herself from hearing this suit.
2. That this Honourable court be pleased to direct that the matter be placed before the presiding judge in the Environment and Land Division for directions in respect of its hearing.
3. That costs of this application be in the cause.

The Application is premised on the grounds appearing on the face of it together with the Supporting Affidavit of the Plaintiff, Lawrence Mukiri Mungai, sworn on 27th March 2014 in which he averred that he is the Plaintiff in this suit (hereinafter referred to as the “Second Suit”) as well as the Plaintiff in ELC No. 169 of 2008 in which he filed suit as the attorney of one Francis Muroki Mwaura (hereinafter referred to as the “First Suit”). He further averred that the suit property in the First Suit is Ruiru/Ruiru East Block 7/13 while the suit property in the Second Suit is Ruiru/Ruiru East Block 7/11 which has now been subdivided into several subdivisions. He further averred that the facts of the two aforesaid suits are very similar in that Mr. Francis Muroki and he are aggrieved by irregular transfer of their land parcels to the defendants despite the fact that the original titles are in their possession and they have never been

cancelled. He further averred that on 10th May 2013, Her Honour Justice Mary Gitumbi delivered her judgment in the First Suit and found that despite the fact that the 2nd Defendant in that suit had acquired the Plaintiff's title fraudulently, the third parties who bought the land from him were innocent purchasers and had a valid title. He further stated that he was apprehensive that in view of the similarity of the facts and circumstances in the First Suit and the Second Suit, it is unlikely that the court will arrive at a different decision while deciding the Second Suit. He further stated that it was his wish that another judge who has not dealt with this matter do hear the Second Suit so that he does not feel like his case is already predetermined.

The Application is unopposed.

It is true that I rendered a judgment in the First Suit on 10th May 2013. It is evident that the Plaintiff is convinced that he is likely to get a judgment in the Second Suit which is similar to the one I delivered in the First Suit if I proceed to hear and determine the Second Suit. It is on that basis that the Plaintiff seeks for my recusal from hearing and determining the Second Suit.

Indeed, it is a well-established principle that justice must not only be done but should always be seen to be done. In the case of **Alliance Media Kenya Limited –vs- Monier 2000 Limited & Njoroge Regeu HCCC No. 370 of 2007 (eKLR)**, Warsame J did state as follows;

“In my understanding, the issue of disqualification is a very intricate and delicate matter. It is intricate because the attack is made against a person who is supposed to be the pillar and fountain of justice.....justice is deeply rooted in the public having confidence and trust in the determination of disputes before the court. It is of paramount importance to ensure that the confidence of the public is not eroded by the refusal of judges to disqualify themselves when an application has been made.”

On my part, I see nothing to prevent me from granting the Plaintiff the orders he seeks. It is on that basis that I hereby allow this Application. Costs shall be in the cause. I therefore direct that this file be placed before Nyamweya, J. on 14th July 2014 for reallocation to another judge.

It is so ordered.

SIGNED AND DELIVERED AT NAIROBI THE 11TH DAY OF JULY 2014.

MARY M. GITUMBI

JUDGE